CAROLINE D. AND JAMES D. TYLER
v.
ACTING BILLINGS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-127-A Decided January 8, 1991

Appeal from a decision disapproving a mortgage of Indian trust land.

Affirmed.

1. Board of Indian Appeals: Jurisdiction--Indians: Lands: Individual Trust or Restricted Land: Alienation

Decisions concerning the approval of a mortgage of Indian trust or restricted land under 25 U.S.C. § 483a (1988) are committed to the discretion of the Bureau of Indian Affairs. In reviewing such decisions, it is not the function of the Board of Indian Appeals to substitute its judgment for that of the Bureau. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

APPEARANCES: Caroline D. and James D. Tyler, pro sese.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellants Caroline D. and James D. Tyler seek review of a June 8, 1990, decision of the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), disapproving a mortgage of trust land belonging to Caroline Tyler. For the reasons discussed below, the Board affirms the Area Director's decision.

Background

Caroline Tyler is the beneficial owner of a 480-acre parcel of trust land on the Fort Belknap Reservation, Montana. James Tyler, her husband, has entered into contracts with the Department of Agriculture under the Conservation Reserve Program (CRP) established pursuant to Title XII, Subtitle D, of the Food Security Act of 1985, 16 U.S.C. § 3831 (1988). 1/

1/ Under this program, farmers may receive payments for agreeing to place highly erodible croplands into soil-conserving uses. It appears that James entered into the CRP contracts for the property owned by Caroline. No copies of the contracts are included in the record.

In December 1989, James applied to the Board of Investments of the State of Montana, Conservation Reserve Enhancement Program, for a loan in the amount of $50,175.78. He sought the loan to pay operating costs and to retire existing debts. The Board of Investments evidently required as security both assignment of the CRP contracts and a mortgage of Caroline's property. James purported to execute a mortgage agreement on behalf of Caroline. 2/ On November 6, 1989, Caroline had signed a document entitled "Agreement," containing a land description and stating: "I agree that the foregoing land described can be held as collateral by the Department of Commerce, Board of Investments, State of Montana for loans on C.R.P. payments to James D. Tyler."

Appellants sought BIA approval of the mortgage. 3/ By memorandum of June 8, 1990, the Area Director informed the Superintendent, Fort Belknap Agency, BIA, that the mortgage would not be approved. The memorandum stated:

> The application shows James D. Tyler as the applicant, and Mr. Tyler would also be receiving the CRP payments. Caroline Tyler is not listed as the borrower and is only a party to the transaction as the owner of the land required as security for the loan.
>
> The real estate mortgage in the package from the Board of Investments to be completed by the mortgagor was executed by James D. Tyler signing Caroline Decelles Tyler by him. A real estate mortgage document must be signed by the landowner before a Notary Public, before it can be given consideration for approval.
>
> The purpose and use of the loan proceeds is a prime factor for consideration on approval of a real estate mortgage on trust land. The Bureau may approve mortgages given as security for loans to finance productive enterprises operated by the borrowers. A loan for an advance of the CRP payments to be used for general purposes will not be approved. The cost of this loan over the 9-year period will be in excess of $31,000.

The Superintendent informed Caroline by letter of June 15, 1990, of the Area Director's decision. The letter stated that she could appeal the decision to the Area Director. Appellants filed a notice of appeal with the Area Director, who forwarded it to the Board. 4/

2/ The date on the mortgage document is not legible on the record copy. Appellants state that James had a power of attorney from Caroline. However, no copy of this document appears in the record.

3/ 25 U.S.C. § 483a (1988) authorizes individual Indian owners of trust or restricted land to mortgage their land with the approval of the Secretary, of the Interior. See also 25 CFR 152.34.

4/ These procedures were incorrect. As discussed in Parisian v. Acting Billings Area Director, 19 IBIA 109, 110 (1990), under 25 CFR 2.7(a), the Area Director should have notified Caroline directly of his decision.

The appeal was docketed on August 14, 1990. No briefs were filed.

Discussion and Conclusions

James and Caroline filed separate notices of appeal. James states that his name appeared on the loan application because he held the CRP contracts and because he prepared the paper work. He believed his signature on the mortgage document was adequate because he held Caroline's power of attorney. He states that the loan proceeds were to be used primarily to pay off existing debts but that appellants also hoped to establish a truck garden.

Caroline states that appellants planned to build a greenhouse and establish a truck garden but concedes that these plans were not shown in the materials they submitted to BIA. She further concedes that appellants' primary need for the loan was to pay existing debts. Caroline also states:

> The real estate to be mortgaged was bought by James D. Tyler and Caroline D. Tyler and the deed title was held in trust status because it was on the reservation. It was felt that it would be held more secure and in good status and also that it was better for this land to stay under Indian and B.I.A. control.

[1] The Board has held that approval of a conveyance of Indian trust or restricted land is committed to the discretion of BIA and that the Board may not substitute its judgment for that of BIA. Escalanti v. Acting Phoenix Area Director, 17 IBIA 290 (1989). See also HCB Industries v. Muskogee Area Director, 18 IBIA 222 (1990); Thornburg v. Acting Anadarko Area Director, 18 IBIA 239 (1990). The same is true for approval of mortgages of Indian trust and restricted land. In reviewing BIA discretionary decisions concerning whether a mortgage of trust or restricted lands should be approved, the Board does not substitute its judgment for that of BIA. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion. See, e.g., Escalanti.

Appellant Caroline Tyler has articulated her belief that her property is more secure because it is in trust status and under the control of BIA. Indeed, Congress has recognized that Indian lands in trust status are less likely to be lost. 5/ One of BIA's responsibilities in managing Indian trust lands is to prevent their improvident alienation.

In this case, BIA reasonably concluded, given the plans presented by appellants, that Caroline's property would be put at risk if it were mortgaged. Further, BIA did not err by not considering appellants' intent to establish a truck garden, because appellants failed to inform BIA of that intention.

5/ See, e.g., Indian Reorganization Act, 25 U.S.C. §§ 461-479 (1988); Indian Land Consolidation Act, 25 U.S.C. §§ 2201-2211 (1988).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Billings Area Director's June 8, 1990, decision is affirmed.

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Anita Vogt
Administrative Judge

I concur:

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Kathryn A. Lynn
Chief Administrative Judge